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August 19, 2008

BY FACSIMILE (212) 805-7928

Hon. Michael H. Dolinger
United States Magistrate Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl St., Room 2270
New York, NY 10007

Re: Signature Bank v. Ahava Food Corp., et al., 08 Civ. 3893

Dear Judge Dolinger:

On behalf of Signature Bank ("Signature"), I write the Court to address defendants' continued attempts to avoid discovery and, specifically, Mr. Antonucci's and/or his clients' latest attempt to cancel depositions that had previously been scheduled for later this week.

On August 8, 2008, the Court held a teleconference with the parties to discuss the current deposition schedule. During that call, Mr. Antonucci stated that he represents defendant Ana Banayan (who had been noticed for deposition on August 11, 2008 (see Ex. 1, Deposition Notice for A. Banayan)) and is going to represent her daughters, Rivka Banayan and Devro Banayan (who had been subpoenaed for deposition on August 20, 2008 (see Ex. 2, Rule 45 Subpoenas for R. Banayan and D. Banayan)). At no time during that call did Mr. Antonucci object to those depositions going forward. Rather, he simply stated that he was not available on August 11th -- the day on which Ana Banayan's deposition was noticed -- and asked that her deposition and the depositions of Rivka and Devro Banayan be adjourned until counsel for the parties could agree to a mutually convenient time for everyone involved. Not only did Signature agree to work out new dates for the Banayans' depositions, but the Court ordered that "counsel for plaintiff and Anna Banayan are to arrange an alternate date for her deposition in view of counsel's unavailability for August 11, 2008." (See Ex. 3, 8/08/08 Order.)

Pursuant to the Court's directive, my colleague Mara Levin telephoned Mr. Antonucci immediately after the call with the Court had ended. During that call, Mr. Antonucci agreed that (i) Ana Banayan's deposition would take place on August 21, 2008, and (ii) Rivka and Devro Banayan's depositions would take place on August 22, 2008. Ms. Levin then confirmed those dates with Mr. Antonucci in a letter dated August 11, 2008. (See Ex. 4, 8/11/08 Letter from Levin to Antonucci.)

ENDORSED ORDER

The deposition of Anna Banayan is to be conducted on Sept. 10, 2008. If plaintiff wishes to enforce the subpoena possibly served on Rivka Banayan, it is to do so by formal motion. If plaintiff wants to do alternative service on any non-party, it is to seek such relief by formal motion.

M. 10 Sept 8/20/08

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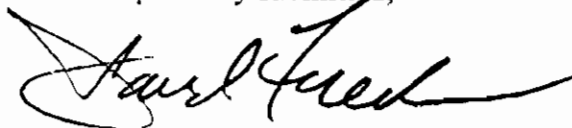
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Yesterday, however, Mr. Antonucci claimed for the first time that he does not represent Rivka or Devro Banayan and that Ana Banayan is unavailable for her deposition because "she is in the nation of Canada." (See Ex. 5, 8/18/08 Letter from Antonucci to Levin.) Mr. Antonucci further claims that he was unable to advise us sooner of these facts because he was "away from the office" last week (even though he had previously admitted that he was not going away on vacation and would be "around"). Whether Mr. Antonucci's excuses are legitimate or not,¹ Mr. Antonucci cannot continue to agree to deposition dates on behalf of his clients and then adjourn them at the eleventh hour -- or, even worse, claim that he was never authorized to agree to those dates in the first place -- with impunity.

Accordingly, Signature respectfully requests that the Court issue an order directing (i) Ana Banayan to appear for deposition on August 21, 2008 as agreed to by the parties, (ii) Rivka Banayan to appear for her deposition on August 22, 2008, and (iii) Devro Banayan to appear for her deposition on August 22, 2008, or on the next mutually convenient date thereafter prior to September 12, 2008.²

We are available for a conference with the Court if Your Honor believes one is necessary.

Respectfully submitted,



David Feuerstein

¹ Obviously, Signature believes that Mr. Antonucci's excuses are pure pretext and are intended to do nothing other than further defendants' plan to delay discovery. In fact, this is not the first time that Mr. Antonucci has suddenly learned of facts that he should have known when he agreed to a deposition date. For example, when the parties were scheduling Moise Banayan's deposition, Mr. Antonucci stated that the deposition had to take place in Watertown, New York because that is where Mr. Banayan lives and, as an observant Jew, needed to be in order to observe the Sabbath that Friday night. But as we learned on the day of Mr. Banayan's deposition -- after having spent 5 1/2 hours driving to Watertown and after having sought confirmation from Mr. Antonucci that Mr. Banayan would be available until 5 pm that day -- Mr. Banayan actually lives in Monsey, and only spends the first part of the week in Watertown. Obviously, had Mr. Antonucci made that fact known to us when we were discussing Mr. Banayan's deposition date, we would not have scheduled Mr. Banayan's deposition to take place in Watertown and would not have been required to continue his deposition the following Sunday.

² As detailed in the attached affidavits of due diligence, Rivka Banayan was effectively served even though she pretended to be someone else (see Ex. 6, 7/25/08 Affidavit of M. Sandstrom), while Devro Banayan has thus far avoided personal service despite numerous attempts by Signature (see Ex. 7, 8/4/08 Affidavit of M. Sandstrom). While Signature served both subpoenas on Mr. Antonucci, who claimed to represent Rivka and Devro Banayan, it will re-serve the subpoena(s) on either or both women if the Court so orders. In that event, Signature requests that the Court permit it to serve Rivka and Devro Banayan by alternate means in light of their attempts to avoid personal service.

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cc: Josefina F. McEvoy, Esq.
David P. Antonucci, Esq.
Seth Eisenberger, Esq.
Christian H. Dribusch, Esq.